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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BRIAN H. ROBB, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

FITBIT INC., JAMES PARK, WILLIAM R.
ZERELLA, ERIC N. FRIEDMAN, JONATHAN
D. CALLAGHAN, STEVEN MURRAY,
CHRISTOPHER PAISLEY, MORGAN
STANLEY & CO. LLC, DEUTSCHE BANK
SECURITIES INC., and MERRILL LYNCH,
PIERCE, FENNER & SMITH INC.,

Defendants.

No. 3:16-cv-00151-SI

CLASS ACTION

**SECOND JOINT CASE
MANAGEMENT STATEMENT**

Date: April 27, 2017
Time: 11:00 a.m.
Judge: Hon. Susan Illston
Courtroom: 1 – 17th Floor

Defendants Fitbit, Inc. (“Fitbit”), James Park, William R. Zerella, Eric N. Friedman, (together with Fitbit, the “Exchange Act Defendants”), Jonathan D. Callaghan, Steven Murray, and Christopher Paisley, (together with the Exchange Act Defendants, the “Fitbit Defendants”), Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Underwriter Defendants” and together with the Fitbit Defendants, “Defendants”), and Lead Plaintiff the Fitbit Investor Group (“Lead Plaintiff” and together with Defendants, the “Parties”) by and through their undersigned counsel of record submit this Second Joint Case Management Statement pursuant to Civil Local Rule 16-10(d) in advance of the April 27, 2017 Case Management Conference.

1. Progress or Changes Since the Last Statement

On December 2, 2016 Lead Plaintiff filed the Parties’ initial Joint Case Management Statement (ECF No. 135). Since then the following significant developments have occurred in this case:

- On December 2, 2016 Defendants filed answers (ECF Nos. 134, 136) to the amended complaint (ECF No. 89).
- On December 15, 2016 the Parties exchanged initial disclosures. However the Parties have yet to exchange copies of insurance agreements as required by Fed. R. Civ. P. 26(a)(1)(A)(iv). The Fitbit Defendants will produce copies of insurance agreements after the parties finalize a protective order.
- The Exchange Act Defendants filed a motion for reconsideration (ECF No. 143) on December 23, 2016, which the Court denied (ECF No. 147) on January 19, 2017.
- Lead Plaintiff sent initial document requests to the Defendants on December 6, 2016. Defendants provided their objections and responses on January 20, 2017. Defendants will begin producing responsive documents after the parties finalize the ESI protocol and protective order, and after the parties agree upon appropriate search terms for the collection and review of responsive material.
- The Parties are currently negotiating the terms of a stipulated protective order and a protocol for the production of electronically stored information.

- Lead Plaintiff sent initial interrogatories to the Defendants on March 10, 2017, to which Defendants responded on April 18, 2017.
- Lead Plaintiff filed a motion for class certification (ECF No. 150) on March 3, 2017. Defendants filed a statement of non-opposition (ECF No. 153) to the motion on March 31, 2017.
- The Parties filed a stipulation (ECF No. 154) to modify the class definitions contained in Lead Plaintiff's motion for class certification on March 31, 2017. The Court so-ordered the stipulation (ECF No. 156) on April 4, 2017.

2. Proposals for Remainder of Case Development Process

The Parties propose to manage the case as outlined in their initial Joint Case Management Statement (ECF No. 135). The Parties anticipate that in the near future they will complete their negotiations for a stipulated protective order and a protocol for the production of electronically stored information. The Parties will then be able to begin document collection and production.

As discussed at the December 9, 2016 case management conference, Defendants intend to file a summary judgment motion on causation directed at all claims, based solely on publicly available information and Lead Plaintiff's own allegations; Defendants plan to file the motion during the week of April 24, 2017. Lead Plaintiff intends to oppose the motion, and believes that it is premature given that document production has yet to begin.

3. Parties' Views on Appropriateness of ADR

The Parties discussed the ADR process in their Fed. R. Civ. P. 26(f) conference. In compliance with Civil Local Rule 16-8(b) and ADR Local Rule 3-5(b) the Parties filed ADR certifications, and filed a stipulation to pursue private mediation (ECF No. 129) by November 1, 2017. The Parties' stipulation was approved by an order of the Court (ECF No. 133).

The Parties continue to believe that they will be better positioned to pursue ADR after conducting further discovery and/or after receiving a ruling on Defendants' anticipated motion (or motions) for summary judgment.

DATED: April 20, 2017

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SECOND JOINT CASE MANAGEMENT STATEMENT

1 DATED: April 20, 2017

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15 DATED: April 20, 2017

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